

## DELTA PROTECTION COMMISSION

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May 23, 1995

**TO: LEVEE SUBCOMMITTEE**

**FROM: STAFF**

**RE: DELTA REGULATORY PROGRAM**

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This memo updates the Delta permitting process for activities that are of particular interest to the Commission; specifically dredging, levee maintenance, and habitat creation. The memo first discusses the status of the required permits for each activity from each of the several State and federal agencies. The memo also addresses pending changes to the permit process. All projects must comply with the California Environmental Quality Act (CEQA). The lead agency is responsible for making sure that CEQA requirements are met.

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**A. ACTIVITY: DREDGING; GENERAL: (FLOOD CONTROL; NAVIGATION; CONSTRUCTION MATERIAL, ETC.).**

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**I. AGENCY: REGIONAL WATER QUALITY CONTROL BOARD; CENTRAL VALLEY REGION (CVRWQCB).**

The CVRWQCB is mandated by the Federal Clean Water Act, to control activities affecting water quality, such as dredging. The CVRWQCB is currently preparing a general order which would set testing requirements and processing fees for dredging requirements. Very small projects would be exempt. All other projects would require testing of material to be dredged. CVRWQCB also regulates location of placement/disposal of dredged material (e.g. on land or in-water).

**a. General Order Waste Discharge Requirements for Dredging Activities Associated with Delta Levee Maintenance (hereafter General Order WDR):** The CVRWQCB General Order WDR is *pending*. The General Order will work in conjunction with GP-014 and NWP 3 by setting forth what submittals must be provided for each dredging activity and dredged material placement activity associated

with levee maintenance projects. The primary purpose of the General Order WDR is to ensure that only "inert waste" is used for levee maintenance and repair projects.

## **2. AGENCY: STATE LANDS COMMISSION.**

The State Lands Commission has jurisdiction over all ungranted tidelands and submerged lands owned by the State, and the beds of navigable rivers, sloughs, lakes and etc. The State's ownership of submerged lands includes lands lying below the ordinary high-water mark of tidal waterways and below the low-water mark of non-tidal waterways. The State Lands Commission, takes into account public access for recreation and commerce, and protection of natural resources when authorizing dredging or land use leases.

**a. Dredging Lease or Memorandum of Understanding:** For all projects involving dredging, a dredging lease from the State Lands Commission is required. Applications must be submitted on the Standard Application Form. Once the application is approved, a Dredging Lease Standard Form must be completed by the project applicant and the State Lands Commission.

The State Lands Commission is currently adopting a new master Memorandum of Understanding to be used with GP-014 and similar projects. The new Memorandum of Understanding would be issued to each Reclamation District and would be valid for any GP-014 project. A one time \$325 processing fee would be required.

## **3. AGENCY: THE DEPARTMENT OF FISH AND GAME (DFG).**

The Department of Fish and Game has permitting authority for all work affecting habitat in year round rivers and streams, and commenting authority on all wildlife habitat issues.

**a. Streambed Alteration Agreement:** A Streambed Alteration Agreement (Form FG 2023), Fish and Game Code § 1600, is required for anyone who proposes to conduct an activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake, or proposing to use any material from a streambed. The Streambed Alteration Agreement is not a permit but a notification requirement; the project applicant must first notify DFG of their proposed activity. This notification requirement applies to any work undertaken within the annual high-water mark of a wash, stream, or lake which contains fish and wildlife or supports riparian vegetation. In the Delta, DFG claims authority from the crown of one levee, down the waterside slope into the channel, to the crown of the levee on the other side of the channel.

**4. AGENCY: ARMY CORPS OF ENGINEERS IN COORDINATION WITH THE U. S. FISH AND WILDLIFE SERVICE AND THE NATIONAL MARINE FISHERIES SERVICE.**

**Army Corps of Engineers:** The Corps has responsibility for controlling dredging, filling, and any other activities that would affect waterways and wetlands under § 404 of the Federal Clean Water Act. The presence of endangered species and endangered species habitat are also protected by the Corps and other federal agencies.

**U.S. Department of Interior; Fish and Wildlife Service (USFWS):** The USFWS is responsible for commenting to the Corps about wildlife and wildlife habitat and potential impacts thereon. USFWS requires the project applicant to verify the presence of these resources, and if identified, to provide means for protecting them.

**U.S. Department of Commerce, National Marine Fisheries Service:** The National Marine Fisheries Service is responsible for preserving and enhancing marine, estuarine and anadromous fish resources, and the habitats that support these resources through comments to the Corps.

**a. Individual Permit for Dredging:** An individual permit is required for all dredging that cannot meet GP-014, NWP 3, or NWP 19 requirements. It typically takes 2-3 months or longer to process individualized permits. No application fee is required.

**b. General Permit 014 (GP-014):** GP-014 authorizes dredging material for use in levee maintenance under specific conditions, especially regarding the time of year when dredging is permitted.

The new GP-014 was issued in December, 1995 and is currently effective until January 1, 2001. The permit authorizes eligible participants of the Delta Flood Protection Act of 1988 program (SB 34) and public agencies doing similar work to dredge material from the Delta's channels for the purpose of maintaining, repairing, and improving levees in the Delta. This permit *only* authorizes dredging activity, *not* the placement of dredged materials (fill) on levees. Placement of fill is only authorized under Nationwide Permit 3.

**c. Nationwide Permit 19:** This NWP authorizes minor dredging of no more than 25 cubic yards.

[NOTE: Draft Nationwide Permits are currently being circulated for issuance at the end of this calendar year.]

## **B. ACTIVITY: REMOVAL OF VEGETATION/HABITAT ON LEVEES:**

### **1. AGENCY: RECLAMATION BOARD.**

The Reclamation Board maintains jurisdiction over all Federal Flood Control Projects or "project" levees. Their area of jurisdiction on the project levees includes all portions of the levee and riverbed. The Reclamation Board also has jurisdiction over "nonproject" levees if the proposed project could have an effect on a nearby project levee.

- a. **Encroachment Permit:** Any person or public agency proposing an activity adjacent to or on levees or streams, including removal of vegetation on the levee, must first obtain a permit from the Reclamation Board.

The application for an encroachment permit takes approximately six weeks to process. No application fee is required for this permit.

### **2. AGENCY: DEPARTMENT OF FISH AND GAME (DFG).**

- a. **Consultation:** Fish and Game Code § 1600 mandates that DFG be consulted on all projects that may affect wildlife and their habitat. After a habitat assessment has been conducted, and habitat impacts have been evaluated, DFG must be consulted to determine whether the project may move forward.

## **C. ACTIVITY: HABITAT CREATION:**

### **1. AGENCY: STATE RECLAMATION BOARD.**

- a. **Encroachment permit:** If any type of earthwork is to be conducted on a levee, an encroachment permit is required.

### **2. AGENCY: STATE LANDS COMMISSION.**

- a. **Land Use Lease:** Anyone proposing to use state-owned land (for purposes other than dredging, mining, or oil and gas exploration) must obtain a land use lease from the State Lands Commission. Therefore, if a project applicant wishes to create habitat on lands owned by the State, a Land Use lease must first be obtained. If ownership issues have not been resolved, State Lands can issue a Land Use Lease for certain uses consistent with the public trust without final resolution of land ownership issues.

### **3. AGENCY: DEPARTMENT OF FISH AND GAME.**

- a. **Consultation:** According to Fish and Game Code § 1600, DFG must be consulted on all projects that may effect wildlife and habitat. After a habitat assessment has been conducted, and habitat impacts have been evaluated, DFG must determine whether the project may move forward.

### **4. AGENCY: ARMY CORPS OF ENGINEERS IN COORDINATION WITH THE U. S. FISH AND WILDLIFE SERVICE AND THE NATIONAL MARINE FISHERIES SERVICE (for Creation of Habitat in a Waterway or Wetland):**

**Army Corps of Engineers:** A § 404 permit is required for placing material in a waterway or wetland, for example, building a berm on the waterside of a levee to create new wetland or riparian habitat.

**U.S. Department of Interior; Fish and Wildlife Service (USFWS):** The USFWS is responsible for commenting to the Corps about wildlife and wildlife habitat and potential impacts thereon. USFWS requires the project applicant to verify the presence of these resources, and if identified, to provide means for protecting them.

**U.S. Department of Commerce, National Marine Fisheries Service:** The National Marine Fisheries Service is responsible for preserving and enhancing marine, estuarine and anadromous fish resources, and the habitats that support these resources.

## **D. ACTIVITY: MAINTENANCE OF LEVEES.**

### **1. AGENCY: ARMY CORPS OF ENGINEERS.**

a. **Nationwide Permit 3:** NWP 3 allows for the repair, rehabilitation, or replacement of any previously authorized levee, berm, rip rap or etc. The Corps has determined that any work meeting the PL-99 cross-section requirements on an existing levee is acceptable under NWP-3. Maintenance dredging is not authorized under this permit.

b. **Nationwide Permit 13:** NWP 13 authorizes the placement of rip rap or other materials for bank stabilization purposes under specified conditions.

### **2. AGENCY: DEPARTMENT OF FISH AND GAME.**

a. **Consultation:** According to Fish and Game Code § 1600, DFG must be consulted on all projects that may effect wildlife and habitat. After a habitat assessment has been conducted, and habitat impacts have been evaluated, DFG must be consulted to determine whether the project may move forward.

The Department of Fish and Game is the coordinating for both GP-014 and NWP 3.

b. **Mitigation:** Due to the loss of habitat associated with some levee maintenance activities, DFG will require mitigation for those activities. Those maintenance activities include: waterside erosions repair, waterside toe berm fill, back slope fill, and seep ditch clean-out. No mitigation is generally required for levee crown work.

### **3. AGENCY: STATE LANDS COMMISSION.**

a. **Dredging Lease or Memorandum of Understanding, and Land Use Lease:** For all projects involving dredging, authorization from the State Lands Commission is required. (See Section A(2).)

### **4. AGENCY: RECLAMATION BOARD.**

a. **Encroachment Permit:** If any type of earthwork is to be conducted on the levee, an encroachment permit is required.

## CONTACTS

### STATE AGENCIES:

**Department of Fish and Game**  
Region 2 (Delta counties and  
eastern Contra Costa County)  
1701 Nimbus Road  
Rancho Cordova, CA 95670  
**Phone Number:** (916) 355-0978

**Department of Fish and Game**  
Region 3 (western Contra Costa,  
includes Antioch and Pittsburg)  
P.O. Box 47  
Yountville, CA 94599  
**Phone Number:** (707) 944-5500

**Central Valley Regional Water  
Quality Control Board**  
3443 Routiers Road  
Sacramento, CA 95827  
**Phone Number:** (916) 445-0270

**The Reclamation Board**  
Encroachment Control Section  
1416 Ninth Street, Room 455-6  
Sacramento, CA 95814  
**Phone Number:** (916) 445-9225

**State Lands Commission**  
Division of Land Management  
and Conservation  
1807 13th Street  
Sacramento, CA 95814  
**Phone Numbers:** (916) 574-1820

### FEDERAL AGENCIES:

**Army Corps of Engineers**  
District Engineer  
Sacramento District (Delta Counties)  
650 Capitol Mall  
Sacramento, CA 95814  
**Phone Number:** (916) 551-2260

**NOTE: U.S. Fish and Wildlife Service  
and National Marine Fisheries Service**  
coordinate directly with the Army Corps  
Engineers, no contact is needed.

### IMPORTANT REFERENCES:

**Department of Fish and Game**  
*SB 34 Delta Levees Master  
Environmental Assessment,*  
October 1995

**Department of Fish and Game**  
*SB 34 Delta Levees  
Mitigation Guidance Document,*  
May 1995

